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NO. 82-975

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1982

MEMBERS OF THE CITY COUNCIL OF THE CITY OF LOS ANGELES; THE CITY OF LOS ANGELES; and EDWARD D. LONGLEY, as Director of the Bureau of Street Maintenance for the City of Los Angeles,

Appellants,

vs.

TAXPAYERS FOR VINCENT, an unincorporated political association, and CANDIDATES' OUTDOOR GRAPHICS SERVICE (COGS), a California corporation,

Appellees.

ON APPEAL FROM UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

MEMORANDUM SUGGESTING A QUESTION OF MOOTNESS

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MEMORANDUM SUGGESTING A QUESTION OF MOOTNESS

The purpose of this memorandum is to bring to the Court's attention recent developments which give rise to a question concerning mootness. Although the appellants (hereinafter referred to as the "City") believe that this case is not moot, the City and its counsel nonetheless recognize their duty to bring such factual developments to the Court's attention and to address this issue. See R. Stern & E. Gressman, *Supreme Court Practice*, 896 (5th Ed. 1978).

Background

This appeal involves a challenge to the constitutionality of an ordinance (Los Angeles Municipal Code Section 28.04, set forth at App. 26a to appellants' jurisdictional statement) which prohibits the attachment of signs to certain types of public and utility property enumerated in the ordinance. In its opinion below, the Court of Appeals for the Ninth Circuit held that the ordinance is unconstitutional on its face. (App. 4a) However, that court suggested that the City could constitutionally prohibit the attachment of signs to some of the objects enumerated in the challenged ordinance; for example, those attached to utility poles (App. 8a-9a), hydrants, trees and shrubs (App. 12a), and those that obscure traffic signs and signals (App. 12a).

The City, therefore, recently enacted a new ordinance, Los Angeles Municipal Code Section 28.04.1 (appended hereto as Appendix A), which prohibits the posting of signs on public and utility property in cases where such prohibition would meet the strictures of the Ninth Circuit decision. Specifically, the new ordinance prohibits the attachment of signs to utility poles, electrical and transmission wires, hydrants, trees, shrubs, and the face of any street sign, traffic sign or traffic signal. This new ordinance became effective on May 13, 1983, thirty days following its publication on April 13, 1983.

This recently enacted ordinance adds a new section to the Los Angeles Municipal Code. It does not, however, repeal Municipal Code Section 28.04, which is the subject of this appeal. Section 28.04 thus remains a part of the Municipal Code, and the City wishes to enforce that ordinance should this Court ultimately uphold its constitutionality.

In the meantime, the City needs a vehicle to protect its citizens against the safety hazards caused by attaching signs to the objects enumerated in the new ordinance. [1/] Therefore, the new ordinance was enacted.

Also, this office has advised the City agencies responsible for enforcing the challenged ordinance that, because of the Ninth Circuit opinion, they should not remove signs posted in violation of that section pending the outcome of this appeal. [2/]

The Case Is Not Moot

Decisions of this Court make plain that despite these developments, the serious constitutional question posed by this appeal is not moot. A case becomes moot "when the issues presented are no longer 'live' or the parties lack a legally cognizable interest in the outcome." ***Powell v. McCormack***, 395 U.S. 486, 496 (1969); see also ***City of Los Angeles v. Lyons***, ____ U.S. ____, 51 U.S.L.W. 4424 (1973).

[1/] The report of the City Council's Public Works Committee, pertaining to the enactment of the new ordinance, recites the governmental interests, related to public safety, justifying the prohibitions contained in the new ordinance with respect to each type of object enumerated, as follows: (1) utility poles - to protect the safety of workers who climb the poles and to assure efficient emergency repairs; (2) power and transmission wires - to prevent falling wires and disrupted service caused by hanging objects; (3) trees and shrubs - to protect against injuries to vegetation; (4) hydrants -to prevent blocking or obscuring by signs; (5) street and traffic signs and signals - to prevent traffic hazards and slowing of emergency vehicles caused by obscured signs and signals.

[2/] Copies of the new ordinance, the reports and the memoranda referred to herein have been provided to counsel for the appellees.

First of all, the ordinance challenged in this lawsuit remains on the books. It was not repealed by the recently enacted ordinance. Therefore, the enactment of the new ordinance does not actually affect the issues or facts underlying this case.

Moreover, the City's temporary cessation of enforcement activity does not make this case moot. The "voluntary cessation of allegedly illegal conduct" does not of its own force moot a case. *United States v. W. T. Grant Co.*, 345 U.S. 629, 632 (1953); see also *City of Mesquite v. Aladdin's Castle, Inc.*, 455 U.S. 283, 71 L.Ed.2d 152 (1982); *County of Los Angeles v. Davis*, 440 U.S. 625, 631 (1979). Mootness will occur if (a) it can be "said with assurance" that there is no reasonable expectation that the "alleged violation will recur" and (b) "interim relief or events have completely and irrevocably eradicated the effects of the alleged violation." *County of Los Angeles v. Davis, supra*, 440 U.S. at 631. "When both conditions are satisfied it may be said that the case is moot because neither party has a legally cognizable interest in the final determination of the underlying questions of fact and law." *Id.* Those conditions have simply not been met in this case.

First, there can be no question that the City desires the ability to enforce the ordinance at issue in this case, Section 28.04. Otherwise, it would not have appealed the Ninth Circuit decision to this Court. The temporary cessation of enforcement activity, pending review by this Court, merely prevents further litigation which might arise if the City were to remove signs which the Ninth Circuit has said the City cannot constitutionally remove. But for the declaration of unconstitutionality by the Ninth Circuit, the City would have continued its previous enforcement policy.[3]/

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[3]/See the Joint Appendix at A.40-41 for an indication of the City's previous enforcement policy.

Moreover, the legislative history surrounding the adoption of the new ordinance reveals that the City intends to resume enforcement of the ordinance challenged herein in the event this Court upholds the validity of that ordinance.

In a report to the City Council advising it of the decision by the Ninth Circuit, this office outlined the regulations which that court suggested could be validly enforced. That report then stated as follows:

> "Because the City is seeking review of the Court of Appeals' decision by the United States Supreme Court, the Council should consider whether it wishes to impose any or all of the regulations set forth above as interim measures pending a decision on the appeal rather than as measures to permanently replace Section 28.04. In that way, if Section 28.04 were eventually upheld, its broader regulation could then again apply."

That report is a part of the City Council's file maintained in connection with the Council's consideration of the new ordinance.

Also, the report of the City Council's Public Works Committee, adopted by the Council in connection with its consideration of the new ordinance, makes reference to the Ninth Circuit decision and the consequent lack of an enforceable regulation of temporary signs on public property. It also references the pendency of this appeal. Thus, it can be fairly said that the adoption of new regulations in a separate section of the Municipal Code, leaving the challenged ordinance intact, evidenced an intent to maintain the City's ability to enforce the challenged ordinance if it is upheld by this Court.

This case is thus like a recent case where the defendant indicated that it would resume the challenged conduct absent a judicial barrier. *City of Mesquite, supra*, 455 U.S. at ____ , 71 L.Ed.2d at 160.

Conclusion

For the reasons stated above, this appeal is not moot, and the Court should proceed to hear this appeal on its merits.

Respectfully submitted,

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City Attorney

GARY R. NETZER,
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ANTHONY SAUL ALPERIN,
Deputy City Attorney
(Counsel of Record)

Attorneys for Appellants

May, 1983

APPENDIX "A"

ORDINANCE NO. 157578

An ordinance prohibiting the attachment of hand-bills and signs to utility poles and other objects.

THE PEOPLE OF THE CITY OF LOS ANGELES DO ORDAIN AS FOLLOWS:

Section 1. Section 28.04.1 is hereby added to the Los Angeles Municipal Code to read:

Sec. 28.04.1. Hand-Bills, Signs - Attachment to Utility Poles, Other Objects.

(a) No person shall attach any hand-bill or sign to:

1. any power or telephone or telegraph pole, owned by a public or private utility, or to any power, electrical or transmission wire attached to any such pole;
2. any tree or shrub;
3. any hydrant;
4. the face of any street sign, traffic sign or traffic signal.

(b) Any hand-bill or sign found illegally attached to any object referred to in Subsection (a) of this Section shall be removed by the Police Department or the Department of Public Works. The person responsible for any such illegal attachment shall be liable for the costs incurred in the removal thereof, and the Department of Public Works is authorized to effect the collection of such costs.

(c) The provisions of this Section shall not apply to signs necessary to preserve the public health or safety, attached to a utility pole by the City of Los Angeles or by a public or private utility owning or using the pole. Any such signs may be attached only in a manner approved by the Department of Water and Power of the City of Los Angeles.

Sec. 2. The City Clerk shall certify to the passage of this ordinance and cause the same to be published in some daily newspaper printed and published in the City of Los Angeles.

I hereby certify that the foregoing ordinance was introduced at the meeting of the Council of the City of Los Angeles of MAR 22, 1983 and was passed at its meeting of MAR 29, 1983.

Approved April 6, 1983 ELIAS MARTINEZ, City Clerk

By Edward W. Ashdown
Deputy

Tom Bradley
Mayor